

TOWNSHIP OF MARLBORO

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Mayor
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March 6, 2009

Via Fax 609-633-6056

Joseph V. Doria, Jr., Commissioner
Council on Affordable Housing
101 South Broad Street
P.O. Box 813
Trenton, New Jersey 08625-0813

Re: Affordable Housing

Dear Commissioner Doria:

As Mayor of Marlboro Township, Monmouth County, I am writing in response to your statements which appeared this week on App.com. In that article you stated that the method upon which affordable housing is built in New Jersey needs to change. I have been advocating that position since I was elected to office. Furthermore, since Marlboro introduced its most recent Fair Share Plan and up and through our visioning process as well at every public hearing which has involved Marlboro's COAH plan, our citizens have echoed this same position.

As public officials, we need to take any necessary action to create and enable conditions under which change and reform can, and will, occur.

However, although you advocated change, you similarly expressed concern that the legal environment in which we find ourselves is not conducive to facilitating reform. Your concern stemmed from what would happen if COAH was either reformed or even disbanded. In that event, you felt that municipalities would be "vulnerable to builders' remedy lawsuits." You further stated that because of the court-created builders' remedy, in order to "change" the system, something would have to be put in place to protect municipalities so as to allow change and reform to occur. In other words, without a mechanism to protect municipalities, towns would be vulnerable to litigation which would not lead to the improvement of our affordable

TOWNSHIP OF MARLBORO

Hon. Joseph V. Doria, Comm., COAH

Re: Affordable Housing

March 6, 2009

Page 2

housing laws nor foster reform, but rather, retard progress, severely tax municipal resources, and impede legislative rehabilitation.

As responsible public officials, we cannot let that happen. We need to create an environment which is conducive and likely to lead to change and reform. Therefore, part and parcel with creating that environment, and in response to your concerns, would be the implementation and pursuit of the following solution.

In the case of Marlboro, we showed good faith by timely filing a Fair Share Plan and Housing Element with COAH in December of 2008. Marlboro voluntarily committed to the COAH process and as you know, we were then deemed complete and our objection period began. It is scheduled to expire on March 30, 2009. The point being that Marlboro did everything that the law required it to do and Marlboro's good faith and voluntary compliance should be recognized and protected by the courts. Indeed, since 1985, in certain situations, courts throughout our state have at times granted municipalities temporary immunity stemming from the procedure established by Judge Serpentelli in the J.W. Field case.

I can see no logical reason why those precepts would not be applied in this instance in order to allow for the proper reformation of affording housing laws in New Jersey. This reformation, in my opinion, cannot come at a more critical time for the residents and taxpayers of this State.

Therefore, although the devastating affect and harm that a builders' remedy action can bring, when left unchecked, is well known, I do not believe that municipalities are powerless to act. I furthermore do not believe that our courts would fail to recognize the crisis underlying our affordable housing laws, the need to urgently and immediately reform them, as well as the pressing need to protect participating and willing municipalities during such time of reformation. Thus, I firmly believe and would advocate that as part of the legislative reformation process relating to our affordable housing laws, that our courts become a partner in our mission by providing municipalities like Marlboro with temporary immunity from builders' remedy actions while we discuss and negotiate solutions to the issues facing our municipalities and taxpayers as it relates to affordable housing. It is only under these conditions that reform can become a reality. Such reform will truly foster "fair" affordable housing laws and allow towns to meet their constitutional obligations. In my opinion, it is hard to fathom a more deserving or overriding public policy than that.

Thus, I firmly believe that change can become a reality and we can achieve this most critical goal of reform in a time when our residents and citizens need it the most.

TOWNSHIP OF MARLBORO

Hon. Joseph V. Doria, Comm., COAH

Re: Affordable Housing

March 6, 2009

Page 3

I believe our courts would, and should, get involved in this matter and that by granting temporary immunity they will help create favorable conditions to foster reform which is so desperately needed.

I ask that you consider the foregoing solution to the concerns you posed in the Asbury Park Press article. I would welcome the opportunity to further discuss this matter with you at your convenience.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jonathan L. Hornik". The signature is fluid and cursive, with the first name "Jonathan" being more prominent than the last name "Hornik".

Jonathan L. Hornik, Mayor